quoted, with approbation, the remark of the New York Court of Appeals, in *Ernst* v. *Hudson River R. R. Co.*, 35 N. Y. 9, on a kindred question, that the failure of a railroad company to comply with its statutory duty to give the proper signals at the crossings of a highway, was a breach of duty to the passengers, whose safety it imperilled, as well as to the wayfarer, whom it exposed to mutilation and death: *Rohbuck* v. *Pacific R. R.*, 43 Mo.

In construing the statute we must examine the whole object which led to its enactment. The words are that the company shall be "liable in double the amount of all damages which shall be done by its agents, engines or cars, to horses, cattle, mules or other animals on said road." It seems to me plain that a direct or actual collision was contemplated. That when the agents of the road run the locomotive or cars against any animal, and thereby injured it or in any other manner it was hurt by actual contact or touch, then the company should be responsible for the penalty, otherwise not. I am, therefore, of the opinion that the judgment of the District Court should be reversed.

The other judges concur.

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*Supreme Court of Illinois.*

## THE PEOPLE EX RELATIONE THE ATTORNEY GENERAL *v.* SALOMON.

A statute passed under the forms of law is binding upon all public ministerial officers, and obedience will be enforced by *mandamus*.

A citizen whose rights are affected by such statute has the right to test its constitutionality by appropriate proceedings in the Courts, but a public ministerial officer has no such privilege, his official duty is to obey the law.

A party who has by his own illegal acts put obedience to a *mandamus* out of his power, but neglects to return that fact in his answer to the alternative writ, so that the Court, in ignorance of it, issues a peremptory writ, is liable to punishment for contempt in not obeying the latter writ.

On the 14th of October, 1867, the auditor of public accounts, in obedience to law, gave notice under his official seal, to the defendant, as clerk of the county court of Cook County, that

the state board of equalization had raised the assessed value of property in that county, for the purposes of taxation, twenty-four per cent., and that it would be the duty of such clerk to extend the taxes on the collector's books according to such increased valuation. This the defendant declined to do, on the assumed ground that the equalization law was unconstitutional; and at the January term, 1868, of this court, the auditor applied to the Supreme Court for a mandamus commanding the defendant to extend this tax. To the alternative writ the defendant made a return setting up the unconstitutionality of the law as a reason for not obeying it, but not disclosing the fact that the tax books had already been delivered by him to the township collectors. The case was heard by the court on the return to the writ, and argued by counsel, when, on the 10th of February, 1868, a peremptory mandamus was awarded, this court holding the equalization act to be constitutional. At the present term of this court the attorney general filed an information, giving the court to be informed that the defendant had not obeyed the peremptory mandamus.

Upon this information this court awarded an attachment for contempt, and the defendant being brought before the court thereon, the attorney general filed a series of interrogatories, to which defendant responded under oath. The answers were admitted to be true.

The defendant being in court, the judgment was delivered by

BREESE, C. J.—We do not deem it necessary to pronounce in detail upon all the items of your several answers to the interrogatories. Your answer to the second interrogatory, considered with the others, disclaiming all intentional disrespect to the mandate of this court, embodies your defense to this proceeding, the substance of which answer is, that so soon as the peremptory mandamus was served upon you, on the 11th of February, 1868, you obtained the advice of eminent counsel, the tenor of which was, that you should, forthwith, demand of the several collectors a return of the tax books then in their possession, so that you might make thereon the taxation, as commanded by the writ.

That you ascertained, on application to the county treasurer,

that the collectors of the twenty-eight towns outside of Chicago had returned the books to him; that you demanded of the treasurer the books that you might comply with the order of this court, and that he refused to deliver the books to you, giving as a reason that the law required him to retain the possession of the books for the purpose of collecting the taxes then remaining unpaid, and for making out his delinquent list, and for making application to the proper court for judgment upon it; and that he could not return the books until after the tax sale in the month of September following.

That you called upon the collectors of the towns of North, South and West Chicago, informing them that you had received the writ of mandamus, and demanded of them their books for the purpose of extending upon them the additional twenty-four per cent., and that they severally refused to deliver the books to you, giving as a reason for such refusal that the warrants attached to the books required them to collect the taxes as thereon extended, and to make return of the books to the county treasurer by the 15th of May following, and also that they had given heavy bonds for the performance of that duty.

That you suggested to the auditor, on informing him of these facts, that as a means of overcoming the difficulties in the way, the best course would be to extend this additional tax on the books of 1868 as "back tax," to which the auditor did not assent.

That upon learning this non-assent of the auditor, you proposed to the chairman of the board of supervisors the propriety and necessity of making out new books, extending on them this additional tax; and that the chairman informed you that it was necessary, as he understood the law, that he should sign the warrants attached to such books, as chairman of the board of supervisors, in order to their validity; and that he would not sign such warrants if you did make up new books; and that thereupon you again consulted your legal adviser, and he informed you that if the chairman of the board refused to sign the warrants attached to the proposed new books, they would be illegal and useless, and that he had grave doubts whether, if the chairman should sign such warrants,

they would be valid; as he understood the command of the writ of mandamus, it was that the additional tax should be extended on the original books, and therefore, could not advise you to take the labor and expense of so doing.

That the collector's books were not returned to your office until the last of October or first of November, 1868, which was some time after the tax sale, and whilst you were engaged, with all the force of your office, in making up the collector's books for that year, when it was too late, under the law, and impracticable and impossible, in any point of view, for you to extend the taxes in the books of 1867, and collect the same.

That when you were engaged in preparing the books for the collection of the taxes of 1868, you consulted your adviser as to the propriety of extending this additional tax on those books as "back tax," and his opinion was that it would not be legal, and might invalidate the whole levy of 1868; and that he was of the opinion there was no other way to collect that tax but by the enactment of a special law by the legislature.

That in pursuance of that opinion you visited the seat of government during the session of 1869, and urged upon several of the members from Cook County the necessity of the passage of a special act for levying and collecting this tax; but for some reason unknown to you, such an act was not passed.

The foregoing embraces the merits of your defence to this proceeding, and which you claim purges the contempt with which you stand charged.

The substance of your return is, that you had returned the books to the tax collector, and could not re-possess yourself of them for the purpose of extending the additional tax.

We have carefully considered this return, and, in our judgment, it is, as a justification, open to serious objections.

The first is, that this fact existed at the time the alternative writ issued, and should have been embraced in the return of that writ, in order that the court might have disposed of the case on a full knowledge of all the facts, and have so shaped its proceedings as to suit the emergencies of the case as it then actually stood.

Instead of that, you submitted the case to the court upon

the theory that the books were still in your hands, or subject to your control, and thus, by your withholding the fact upon which you now rely for a justification of your alleged contempt, the court was compelled to make an order which you now say it was impossible for you to obey.

The court was not unaware that the time for the delivery of the books to the collector had expired, but as the proceedings were solely for the purpose of compelling you to extend the tax, and you did not profess it was not in your power to do so, or that you had parted with control of the books, the court, in making its final order, acted upon the case made by yourself and for yourself in the record.

But the main objection to the sufficiency of your answer is, that you are endeavoring to excuse your disobedience to a command of the court, by setting up your own previous disobedience to a command of the legislature, you are seeking to escape the consequences of one wrongful act by pleading that you have committed another not less wrongful. This species of defence is, in our judgment, forbidden you by that universal principle of law which forbids a party to avail himself of his own wrong.

This maxim lies at the very foundation of jurisprudence, and is applied alike in civil and criminal proceedings. The statute requires you to do a certain act; you refused to do the act, and when the agencies of the court are set in motion, by the proper officers of the state, to compel you to do it, you seek to escape obedience to their commands by alleging that you so acted as to render their power ineffective, and at the same time make yourself safe in your disobedience by consummating your illegal act before the court had spoken.

To allow this sort of defence to be made as a justification for disobeying the peremptory writ, would be to set all law at defiance and make the mandates of this court a by-word and a jest. Your duty was to extend the tax on the 15th of October, 1867, when the books were in your possession, so that the tax might have been collected by distress, or by the sale of the real property of the delinquents.

The dilemma in which you are now involved, is the conse-

quence of your failure to do this precedent act, which would have assured the collection of the tax at the time provided by law. It would be unjust, therefore, should you be permitted to shield yourself from responsibility in this proceeding, you, yourself, having created the circumstances by which you were disabled from obeying the mandamus.

The law under which the additional tax was imposed had passed the legislature under all the forms of the constitution, and had received executive sanction, and became by its own intrinsic force the law to you, to every other public officer in the state, and to all the people. You assumed the responsibility of declaring the law unconstitutional, and at once deter mined to disregard it, to set up your own judgment as superior to the expressed will of the legislature; asserting, in fact, an entire independence thereof. This is the first case in our judicial history in which a ministerial officer has taken upon himself the responsibility of nullifying an act of the legislature for the better collection of the public revenue—of arresting its operations—of disobeying its behests, and placing his own judgment above legislative authority expressed in the form of law. To the law every person owes homage, "the very least as needing its care—the greatest as not exempted from its power."

To allow a ministerial officer to decide upon the validity of a law, would be subversive of the great object and purposes of government. For if one such officer may assume infallibility, all other like officers may do the same, and thus an end be put to civil government, one of whose cardinal principles is subjection to the laws. Being a ministerial officer, the path of duty was plain before you. You strayed from it and became a volunteer in the effort to arrest the law, and it was successful. Had the property owners who were subjected to this additional tax, considered the law unconstitutional, they could, in the proper courts, have tested the question, and it was their undoubted right to do so. Your only duty was obedience. The collective will of the whole people was embodied in that law. A decent regard to them required that all thei servants should obey it. Your disobedience being the cause of your inability to obey the mandamus, cannot, as we have said, be made a justification of this proceeding.

In coming to a conclusion in this case, our attention has been arrested by a part of your answer to the third interrogatory of the attorney general, wherein you say that by the action of the financial committee of the board of supervisors, about the 15th of October, 1867, in directing you not to extend the additional tax, and by the almost unanimous direction given by the board of supervisors by resolutions passed at the following December session, to the same effect and purpose, a public sentiment and feeling was created against its extension that continued after the issuing the writ of mandamus, and was very embarrassing to you.

This leaves your conduct exposed to the inference that, as a public officer, charged with the performance of an important duty, involving, in some degree, the welfare of the state, you desired to interpose the advice and determination of other county officials, who were under no responsibility whatever in the particular case, and that you would invoke an excited public opinion to justify a dereliction of duty.

You certainly were not unaware that every person who obtains public office takes it with all its responsibilities, and voluntarily comes under a pledge to the constituent, that they shall be fully met and promptly discharged. No public officer should shrink from the performance of a duty imposed by law, because public sentiment may be opposed to the law. To sustain a plea that he was deterred from action by an excited public opinion, would put an end to civil government. There can be no brighter exhibition of the moral sublime than a persistent performance of duty unswayed by popular clamor and undismayed by threats of popular vengeance. However much an angry crowd of to-day may denounce the officer, the sober second thought of to-morrow will as loudly applaud.

Upon a calm review of the whole case, as presented by the record, the law would not, in our opinion, be properly vindicated, should we pass over your official delinquency by an admonition only. We feel compelled, under a controlling sense of duty, to do something more, to omit which, might operate as encouragement to others. The court, therefore, in view of all the circumstances, have come to the conclusion that you

make your fine to the people of the state of one thousand dollars; and it is further considered that you stand committed until the fine and costs are paid. It is further ordered that the clerk of this court receive and receipt for this fine for the benefit of the treasury of the state.

Had the writ of mandamus reached you while the books were in your possession, and had it been made known to this court that you had refused to extend the tax upon them, we should not have hesitated to inflict upon you the severest penalty. As it is, we are satisfied we could do no less than we have done in vindication of the law.

The duty this court has been called upon to perform has been by no means a pleasant duty. We have endeavored so to discharge it that whilst asserting the supremacy of the law, we have not causelessly invaded any individual right.

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*Court of Common Pleas of New York.*

MACLIN *v.* NEW JERSEY STEAMBOAT COMPANY.

A common carrier may make reasonable regulations as to the place where the baggage of a passenger shall be deposited, and if actual notice of the regulation is given to him, or it be shown that the regulation had become, by general usage, so notorious and universal that he must be presumed to have known it, the passenger violating it cannot recover for loss of his baggage.

Posting a printed copy of the regulation in carrier's conveyance or office, does not amount to notice to the passenger. He is under no legal obligation to read such notices.

A passenger on a steamboat who carries his valise with him to his state-room, does not thereby undertake the exclusive care of it, so as to release the carrier from all liability in regard to it.

The placing of his valise in his state-room by a passenger who has paid his fare and received the key of the room, is a sufficient delivery to the carrier to charge him for negligence.

A regulation that would prevent a passenger, who was to spend the night on a boat, from taking to his state-room the baggage necessary for his toilet and for his daily use, would not be reasonable or valid.

This action was brought to recover of defendants, owners of a line of steamboats running between New York and Albany, the value of a quantity of baggage, consisting of articles of wearing apparel lost on board of one of defendants' vessels.